Conspiracy to Commit Poetry: Empathetic Lawyering at Guantánamo Bay

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The idea to publish a volume of detainee poetry came to me, oddly enough, while I was reading a book of poems written by a U.S. infantry team leader during his stint in the Iraq War. As I paged through Brian Turner's *Here, Bullet*, I was struck by how the soldier-poet opened himself to the strangeness of the Mesopotamian war zone, shoring fragments from the battlefield to build poems of terrible stillness and beauty. In "In the Leupold Scope," for example, Turner imagines a soldier on a rooftop, peering through a spotting scope and witnessing an Iraqi woman hanging laundry from a clothesline:

> *She is dressing the dead, clothing them*
> *as they wait in silence, the pigeons circling*
> *as fumestacks billow a noxious black smoke.*
> *She is welcoming them back to the dry earth,*
> *giving them dresses in tangerine and teal,*
> *woven cotton shirts dyed blue.*[2]

I lingered over these lines, considering how this war poem suffused the most quotidian of tasks—hanging laundry—with mythic meaning; how the position of the soldier, peering from a distance at a familiar but strangely archaic ritual, paralleled that of the poet; how the poem itself served the same function as the spotting scope, as a tool for bridging space and cultural distance. As I thought about how the poem made me feel closer to both the soldier and the Iraqi laundress, I came to a minor revelation. This, for me,

was what poetry was all about—the creation of a space in which *empathy* could flourish, and in which knowledge, fear, and desire might be shared.

Just weeks earlier, I had spent time reading different poems, this time in a fortified room in an office suite run by the Pentagon. The office was known as the "secure facility," where all classified information for our Guantánamo cases was stored by court order. Among the classified documents kept here were not just CIA and FBI reports that had been deemed inappropriate for public disclosure, but also all statements and letters from our clients. Although our clients had been held virtually incommunicado for years, the military insisted that anything they told us represented a potential national security threat, and that their statements therefore had to be treated as classified. This meant that when we visited them at Guantánamo, we were not allowed to place our interview notes into our briefcases to peruse at leisure once we were back home. Nor were our clients allowed to send letters to our offices. Instead, our notes were collected by military escorts for delivery to the secure facility, where our clients' letters would likewise eventually be deposited.

In the secure facility, I read through the collection of letters that our clients had sent to our attention. These were men who had already been detained for years as "enemy combatants"—without charge or trial or the protections of the Geneva Conventions—and who faced the real prospect of being held for the duration of the so-called War on Terror. Their letters, all of which were written in Arabic, had been translated prior to my arrival by a linguist whom we had commissioned for the job. Like us, the linguist needed to hold a security clearance from the FBI before he could review the presumptively dangerous documents.

For the most part, the substance of the letters was typical: updates on the petty indignities to which our clients had been subjected since our last visit, just-remembered details of the status review tribunals during which they had been deemed "enemy combatants," words of thanks for our assistance, and requests for various items—dictionaries, Yemeni honey—that we might

try to bring on our next visit.[3] But among these particular letters was also something unusual. Several of our clients had appended poems that they had written while "inside the wire" at Guantánamo.

The first poem I saw was sent to us by Ali Abdulsalaam Abdulrahman Al-Hela, who had written his verses after spending extended periods in an isolation cell. The poem was a moving cry about the injustice of arbitrary detention, and at the same time a hymn to the comforts of religious faith. Another poem, called "The Shout of Death," had been composed by Adnan Farhan Abdul Latif. It cataloged some of the abuse he had suffered at the hands of his American captors. Although I would like to, I cannot comment more on these poems, because the Pentagon has refused to clear them for public inspection.

While I found these poems interesting on a first reading, it was not until my experience with Brian Turner's poetry that their importance—and utility—occurred to me. Although after many visits to Guantánamo I had come to know my clients as flesh-and-blood men, subject to despair and depression and joy and hope just like all of us, I knew that to much of the rest of the world they were the "worst of the worst," terrorists and vicious killers who would "gnaw through hydraulic lines in the back of a C-17 to bring it down."[4] So far as the American public knew, these were men who, according to the Bush administration, were "picked up on battlefields fighting against our troops,"[5] even though anyone following news reports about Guantánamo should recognize such statements as part of a continuing government disinformation campaign. According to the military's own documents, which were released pursuant to a Freedom of Information Act lawsuit, only 5 percent of the hundreds of men who have been detained at Guantánamo were picked up on a battlefield fighting U.S. troops, and only 8 percent are even accused of being al Qaeda fighters.[6]

After reading *Here, Bullet*, it occurred to me that my clients, through their poetry, were engaged in much the same project as Turner—offering up to their audience an opportunity to connect with another person about whom

they knew little. Their poems, in short, offered an opportunity for empathy, and the possibility that, if they were made public and shared, the American public might begin to see these detainees not as faceless "terrorists," but instead as fathers, sons, and brothers who had only been *accused* of some kind of affiliation with the Taliban or al Qaeda. I queried other lawyers and soon learned that there were literally dozens of amateur poets at Guantánamo, many of whom had shared some of their experiences with their lawyers in verse.

The story of the creation of some of the poems was, moreover, remarkable. In the earliest days of the prison camp, when the men were denied paper and pen altogether, some of the prisoners nonetheless felt such an overwhelming desire to express themselves in verse that they would take a pebble and carve short two- or three-line poems into the styrofoam cups they were given at lunch time. A poem by Shaikh Abdurraheem Muslim Dost, recalled from memory after his release from Guantánamo, is representative:

What kind of spring is this
Where there are no flowers and
The air is filled with a miserable smell?

These transient "cup poems" would be passed around the cell block from prisoner to prisoner, inevitably to be collected with the evening's trash.[7]

The prisoners' urge to create and nurture life in the Guantánamo wasteland was familiar to me. Over the years, several of my clients had recounted their efforts to squirrel away cantaloupe and tomato seeds from their meals, so that when given an opportunity to be outdoors, they might plant the seeds in whatever rocky soil they could find among the prison's concrete walkways. They knew, of course, that without the ability to regularly water their seedlings their efforts would come to nothing. But planting the seeds was an affirmation of their humanity, an effort to stave

off despair, and a gesture of hope. Writing poems, it seemed to me, performed much the same function for the poet-prisoners of Guantánamo.

I have written elsewhere about our efforts to bring this poetry to the eyes of the public,[8] so I will just mention here that the project was difficult and only partly successful. Because all of our clients' letters and in-person communications were classified, anything they told us (like, for example, allegations of abuse at the hands of our soldiers and intelligence agents) could be made public only after approval from a Pentagon "review team." Over the years, clearing anything through this censorship team has been difficult. For example, our first efforts to make public allegations of abuse were initially unsuccessful; our notes, returned with a "secret" stamp, were deemed unsuitable for public release on the grounds that they revealed interrogation "methods and techniques" that the military had a legitimate interest in keeping undisclosed. Only after we threatened litigation did the Pentagon reconsider its classification decisions, allowing the public finally to begin to hear, albeit in a mediated way, from the prisoners themselves.

Like any other communication from our clients, the poems had to pass through the same process before they could be discussed in public. Many, many poems were never cleared by the Pentagon. To begin with, thousands of lines of poetry were destroyed or confiscated before they could be shared with the lawyers. The military confiscated nearly all twenty-five thousand lines of poetry composed by Shaikh Abdurraheem Muslim Dost, for example, returning to him only a handful upon his release from Guantánamo. In addition, after the Pentagon learned that I was gathering poems with an eye to publishing them, the censorship team stopped clearing them altogether, stating that it had concluded that poetry "presents a special risk" to national security because of its "content and format." Nonetheless, before the Pentagon issued its edict banning the clearance of poetry, we were able to collect a sufficient number to merit publication.

The poems that I included in the volume are not susceptible to easy categorization. Some are moving descriptions of despair, such as Jumah al Dossari's haunting "Death Poem," in which he asks his readers to

Take my blood.
Take my death shroud and
The remnants of my body.
Take photographs of my corpse at the grave, lonely.

These lines are more than a *memento mori.* In his poem, Dossari envisions his dead body as an incarnate indictment of an American society that would allow innocents to suffer meaningless torment. His catalog of despair must, he writes, be sent to the "judges" and "the people of conscience," so that they might

bear the guilty burden, before the world,
Of this innocent soul . . .
Of this wasted, sinless soul,
Of this soul which has suffered at the hands of the "protectors of peace."

This sacramental poem is particularly unsettling when the context in which it was drafted is taken into consideration. By the military's own count, Dossari attempted suicide more than a dozen times while at Guantánamo, including once when his lawyer returned from a break in their meeting to find him hanging from his cell, blood pooling at his feet from a gash in his arm.[9]

Other poems gain power through the urgency of their message. "Hunger Strike Poem," for example, by my client Adnan Farhan Abdul Latif, is an attempt to supplement in verse his firsthand accounts of the pain of hunger striking. Latif, who was painfully thin the last time I visited him at Guantánamo, has refused nourishment for months to protest his continued

incarceration without charge or trial. He has often described to me the force feeding he endures twice daily, which includes being strapped into a restraint chair and having a plastic feeding tube inserted through his nasal passage and into his stomach. The experience, he says, is like having a "dagger shoved down your throat."[10] In his poem, Latif wryly describes the soldiers who subject him to this torturous ritual as "poets" in their own right:

They are artists of torture,
They are artists of pain and fatigue,
They are artists of insults and humiliation.

In the last analysis, his poem asks the same basic question as Dossari's: "Where is the world to save us from torture? / Where is the world to save us from the fire and sadness?"

Several of the poems are profound in their seeming simplicity. Siddiq Turkestani's "Even if the Pain," for example, on first reading appears perfectly forthright. But when he writes at the close of the poem that "There must be a day when we will get out," in one line he simultaneously expresses both hope and doubt about his future. Lying behind his poem, too, is a remarkable story—this time of military bungling and of bewildering injustice. Turkestani is an ethnic Uighur who, while traveling in Afghanistan, was abducted by members of al Qaeda and tortured until he "confessed" to plotting to kill Osama bin Laden. He was imprisoned by the Taliban at Kandahar until 2001, when U.S. intelligence personnel visited the jail. He told them his story and was promised a quick release. Instead, he was eventually sent to Guantánamo and held for four years on accusations that included being associated with the Taliban and al Qaeda—before the military determined that he was not an enemy combatant in January 2005. Turkestani was not released from Guantánamo, however, until nearly six months later. His poem was "discovered" by one of

Turkestani's lawyers during the lawyer's first visit to Guantánamo. (This was the same visit during which the lawyer learned that the military had found Turkestani innocent months earlier—something the Justice Department had thus far refused to reveal.) Turkestani had sketched his poem into the sail of a ship that another Uighur prisoner had drawn and taped to the wall of their quarters in Camp Iguana, where they had been moved months earlier in anticipation of their ultimate release.

Other poems, like Emad Hassen's "The Truth" or Ibrahim al Rubaish's "Ode to the Sea," are rich in imagery and thematic complexity. Rubaish's poem, for example, is an extended monologue delivered by the poet and addressed to the Caribbean Sea surrounding Guantánamo. Rubaish envisions the Sea as a potential ally, albeit a perilous one who obviously cannot be trusted:

Were it not for the chains of the faithless, I would have dived into you,
And reached my beloved family, or perished in your arms.
Your beaches are sadness, captivity, pain, and injustice.
Your bitterness eats away at my patience.
Your calm is like death, your sweeping waves are strange.
The silence that rises up from you holds treachery in its fold.

Why, Rubaish asks, after witnessing the injustices taking place on its shores, has the Sea failed to act as savior for the prisoners of Guantánamo?

O Sea, you taunt us in our captivity.
You have colluded with our enemies and you cruelly guard us.
Don't the rocks tell you of the crimes committed in their midst?
Doesn't Cuba, the vanquished, translate its stories for you?

In its complacency, we are told, the Sea has become complicit in the iniquities of the prison camp. The conceit is clearly meant to be an

indictment of the American public's own complacency in the face of revelations about the injustices of Guantánamo. Three years into the Guantánamo experiment, Rubaish asks both the Sea and his readers, "what have you gained?" The answer is not justice, or safety, or peace of mind. The answer is, cryptically, "Boats of poetry on the sea; a buried flame in a burning heart."

I have occasionally been asked why I have devoted so much time to gathering and publishing these poems. Surely the litigation of these cases—touching on fundamental issues like the scope of the constitutional writ of habeas corpus, the boundaries of the inherent powers of the presidency, and the very definition of war itself—merits a lawyer's full attention. Indeed, because our habeas cases have raised a host of legal questions of first impression, my colleagues and I now have matters pending before several judges in the federal district court in D.C.; we are simultaneously litigating three interlocutory appeals in the federal court of appeals; and we are challenging Congress's suspension of the writ of habeas corpus in the Supreme Court, which is expected to issue its decision in the Spring. In addition, Congress's passage of two jurisdiction-stripping statutes in the past two years—the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006—has forced us to proceed with new "DTA lawsuits" on a track parallel to our habeas matters. There is no shortage of procedural matters to attend to.

But even with all of this legal work to keep us busy, my colleagues and I have come to recognize that effective lawyering sometimes requires us to think creatively, to step outside of the boundaries we have defined for ourselves as lawyers. In these Guantánamo cases, in which not a single one of our clients has had his day in court, our challenge has been to bring their suffering out of the darkness. The criminal law is almost by definition dramatic, and the usual place in which the drama plays out and the defendant's story gets told is in legal briefs, supplemented by oral argument before a judge and the public. But after six years of litigation, our clients

continue to be denied access to the courts and to the natural and appropriate venues in which to air their stories. We have been forced by necessity to find alternative ways to speak out, to assert our clients' innocence, and to affirm their essential humanity.

Besides the poetry volume, our projects have included the production of short videos for viewing on YouTube,[11] countless op-ed pieces for newspapers from Alaska to Yemen, and a soon-to-be-released series of one-minute lectures on subjects ranging from a brief history of habeas corpus to the psychological effects of waterboarding. Sadly, viewers who spend just one minute watching my lecture on how Adnan Farhan Abdul Latif was sold to American forces by Pakistani security will have devoted more time to hearing my client's story than any federal judge has yet accorded us.

Our efforts—conventional and otherwise—have unsurprisingly been met with scorn from apologists for the Bush administration. In January 2007, Charles "Cully" Stimson, then deputy assistant secretary for detainee affairs at the Pentagon, listed for the Federal News Radio audience the names of some of the major law firms representing clients at Guantánamo. "I think, quite honestly," he stated, "when corporate CEOs see that those firms are representing the very terrorists who hit their bottom line back in 2001, those CEOs are going to make those law firms choose between representing terrorists or representing reputable firms, and I think that is going to have major play in the next few weeks. And we want to watch that play out."[12] While Stimson's intimidation tactics floundered in the wave of editorials condemning his remarks, his statements were representative of a more pervasive and pernicious attack on the Guantánamo lawyers. Waged most vociferously in the opinion pages of the *Wall Street Journal*, former Justice Department officials from the Reagan administration, as well as some academics, have accused the Guantánamo lawyers of engaging in something called "lawfare."[13]

According to the Council on Foreign Relations, "lawfare" is the "strategy of using or misusing law as a substitute for traditional military means to

achieve military objectives."[14] The idea seems to be that weak states or non-state actors could be expected to flood our courts with frivolous lawsuits, using the rights traditionally afforded by the American legal system to further their hostile ends. As the concept has been fleshed out by conservative commentators and some academics, the theory goes that "lawfare" would divert commanders' attention from military operations, encourage our soldiers to second-guess themselves on the battlefield and (perhaps most importantly, though its adherents would dispute it) embarrass the United States by providing terrorists with a public relations boon.

Those of us who filed habeas corpus petitions for our clients at Guantánamo have been criticized for our "use of international law claims, usually factually or legally meritless, as a tool of war," with the supposed goal "to gain a moral advantage over [the] enemy in the court of world opinion, and potentially a legal advantage in national and international tribunals."[15] We have, in short, been accused of engaging in "lawfare," and of thereby waging asymmetric warfare against the United States. This is no exaggeration. In the March 2005 National Defense Strategy for the United States, Defense Secretary Donald Rumsfeld stated that "our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism."[16] Such remarks echo Attorney General John Ashcroft's statement soon after 9/11, in which he sought to quell criticism of the administration's attack on civil liberties: "[T]o those who scare peace-loving people with phantoms of lost liberty; my message is this: Your tactics only aid terrorists—for they erode our national unity and diminish our resolve."[17]

These attacks have found fertile soil in certain quarters of the citizenry as well. Any Guantánamo lawyer could forward you a number of emails in which he or she has been denounced as a "traitor" for representing "terrorists," or worse. At least one of my colleagues has received a credible death threat because of his work representing our clients. Remarkably, although we are now learning that CIA lawyers in 2005 greenlighted the

destruction of videotapes that captured the torture of detainees Abu Zubaydah and Abd al-Rahim al-Nashiri, conservative commentators have recommended that the government "go on both the legal and public diplomacy offensive" against *us*, "utilizing such aggressive litigation tactics as seeking sanctions against lawyers who make frivolous arguments or violate security regulations."[18]

Few of us doubt that the Pentagon views "detainee poetry" as part of an effort to undermine the administration's detention policies, to castigate its suspension of the writ of habeas corpus, and to publicize its abusive and torturous acts. To be sure, legal and extra-legal efforts to humanize the prisoners at Guantánamo will have all of these effects and will help in some small way to diminish the claim of the United States as the world's beacon for human rights. But the fault does not lie with the poets of Guantánamo or with the lawyers who have brought their poems to the public's attention. The fault lies with an administration that has sought to aggrandize and consolidate executive power at the expense of fundamental principles of due process and the rule of law.

The Pentagon may dismiss our clients' poems as "another tool in their battle of ideas against Western democracies"[19] and accuse the Guantánamo lawyers of engaging in acts of asymmetric warfare. But the truth is that we lawyers are striving to prove that America is worthy of being the city upon the hill that John Winthrop saw as our destiny:

> The eyes of all people are upon us. So that if we shall deal falsely with our God in this work we have undertaken, and so cause Him to withdraw His present help from us, we shall be made a story and a by-word throughout the world. We shall open the mouths of enemies to speak evil of the ways of God, and all professors for God's sake. We shall shame the faces of many of God's worthy servants, and cause their prayers to be turned into curses upon us till we be consumed out of the good land whither we are going.[20]

Our poets—soldier and prisoner alike—are demanding our attention. They are preaching the revelation of empathy, and it is up to all of us to heed their admonitions if we wish to keep America's shame at bay.

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[2] BRIAN TURNER, HERE, BULLET 7 (2005).

[3] The military, as it happens, allowed us to bring our clients Yemeni honey, which is reputed by some to be of the finest quality in the world. The military refused, however, to allow us to bring English-Arabic dictionaries to our clients. Even our attempts to bring *Dr. Seuss's ABC: An Amazing Alphabet Book!* were denied.

[4] General Richard Myers, Chairman of the Joint Chiefs of Staff, Regular News Briefing at Defense Department (Jan. 11, 2002).

[5] Karen Hughes, Under Sec'y of State For Pub. Diplomacy And Pub. Affairs, at Foreign Press Center Briefing on Expanding Outreach to the Muslim World (June 27, 2007). *See also* Interview by Jonathan Beale of BBC News with Condoleezza Rice, Sec'y of State (Dec. 20, 2007) ("These were people who were caught on the battlefields of Afghanistan....").

[6] MARK DENBEAUX & JOSHUA DENBEAUX, REPORT ON GUANTÁNAMO DETAINEES: A PROFILE OF 517 DETAINEES THROUGH ANALYSIS OF DEPARTMENT OF DEFENSE DATA 2 (2006), *available at* http://law.shu.edu/aaafinal.pdf.

[7] A March 2003 "Camp Delta Standard Operating Procedures Manual" was recently leaked to the website Wikileaks, and thereby made available to the public. The manual reveals that at some point the military devised strict rules against communication via styrofoam cup. Camp Delta Standard Operating Procedures Manual, § 8-10(k)(12) ("Styrofoam Cups. If the cup has writing on it, confiscate it . . . and give to the Evidence Custodian. If the cup is damaged or destroyed, the detainee will be disciplined for destruction of government property."), *available at* https://secure.wikileaks.org/leak/gitmo-sop.pdf

[8] *See* Marc Falkoff, *Introduction* to POEMS FROM GUANTÁNAMO: THE DETAINEES SPEAK (2007).

[9] The military stopped calculating "suicide attempts" after a tremendous number of such events was disclosed in media reports. Instead, in truly Orwellian fashion, the military began to refer to suicide attempts as "acts of manipulative self-injurious behavior." In addition, the first three deaths at Guantánamo, all apparent suicides, were dismissed by Navy Rear Admiral Harry B. Harris, the commander of Joint Task Force Guantánamo, as "an act of asymmetric warfare." Sgt. Sara Wood, *Three Guantanamo Bay Detainees Die of Apparent Suicide*, AM. FORCES PRESS SERVICE, June 10, 2006, http://www.defenselink.mil/news/newsarticle.aspx?id=16080. Colleen Graffy, a senior State Department spokesman, told the BBC that the suicides were "a good PR move." Francis Harris, *Guantanamo Triple Suicide Is Good PR for Terrorists, Says America*, THE DAILY TELEGRAPH (Great Britain), June 12, 2006, http://www.telegraph.co.uk/

(enter the article title in the "Search" function at the top of the page and follow the first hyperlink to view the article).

[10] For a detailed description of my relationship with Latif, see Marc D. Falkoff, *This Is To Whom It May Concern*, 1 DEPAUL J. FOR SOC. JUST. (forthcoming Spring 2008).

[11] Lawyers from the Federal Defenders Office in Portland, Oregon, produced a short documentary for YouTube about their client, Adel Hamad. Filmed on a beach in Guantánamo, lawyer William Teesdale explains to his audience that Hamad, a hospital worker and teacher, had been held for years in detention and been denied release even after a member of the military tribunal reviewing his status as an "enemy combatant" had called his continued detention "unconscionable." The moving video includes interviews with Hamad's co-workers from Afghanistan, where he had worked for a hospital supported by a charity that the CIA believed to have an anti-American orientation. The video, "Guantánamo Unclassified," can be viewed at http://youtube.com/watch?v=D5E3w7ME6Fs.

[12] Carol Rosenberg, *Lawyers Condemn Pentagon Official*, MIAMI HERALD, Jan. 12, 2007, at 3A. Reaction to Stimson's comments was immediate and widespread in the editorial pages of the nation's newspapers, decrying the administration's veiled threat against the habeas lawyers. Stimson resigned his government post soon thereafter. *See* Carol Rosenberg, *Three War Crimes Captives Get New Charges*, MIAMI HERALD, Feb. 2, 2007, at 3A.

[13] David B. Rivkin & Lee A. Casey, *'Lawfare' over Haditha*, WALL STREET J., June 7, 2006, at A14.

[14] COUNCIL ON FOREIGN RELATIONS, ROUNDTABLE ON NATIONAL SECURITY: MILITARY STRATEGY & OPTIONS, LAWFARE: THE LATEST ASYMMETRIES 1 (Mar. 18, 2003).

[15] Rivkin & Casey, *supra* note 13. Messrs. Rivkin and Casey have been prolific in their *Wall Street Journal* attacks on the Guantánamo lawyers. *See, e.g.*, David B. Rivkin & Lee A. Casey, *The Gitmo Blues*, WALL STREET J., Mar. 27, 2007, at A19; David B. Rivkin & Lee A. Casey, *Friend or Foe?*, WALL STREET J., Apr. 11, 2005, at A22.

[16] U.S. DEP'T OF DEF., NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA Part I(B)(3) (2005), *available at* http://www.globalsecurity.org/military/library/policy/dod/nds-usa_mar2005_ ib.htm

[17] *Department of Justice Oversight: Preserving our Freedoms While Defending Against Terrorism: Hearings Before the S. Comm. on the Judiciary*, 107th Cong. 313 (2001) (statement of John Ashcroft, Att'y Gen. of the United States).

[18] The only "security regulations" that the military has suggested any of the Guantánamo lawyers have violated range from the preposterous (an allegation that we assisted in the suicides of three detainees in the summer of 2006) to the laughable (an allegation that one of the lawyers smuggled a Speedo bathing suit in for one of his clients).

[19] Yochi J. Dreazen, *Prison Poets of Guantánamo Find a Publisher*, WALL STREET J., June 20, 2007, at A1 (quoting Cmdr. J.D. Gordon, Defense Department spokesman).

[20] John Winthrop, A Model of Christian Charity, (1630), *in* WILLIAM C. PLACHER, READINGS IN THE HISTORY OF CHRISTIAN THEOLOGY VOLUME 2, at 109 (1988).